



Date: May 2, 2019

To: Jim Craig, Director
Health Protection

Through: Ingrid Dave Williams, Chief Legal Counsel
Special Assistant Attorney General *DW*

From: LaTeshya Martin, Legal Counsel *JM*
Special Assistant Attorney General

Re: EMSAC Opinion Request – January 2019

You posed the following questions from the EMS Advisory Council. We have provided the responses below as legal counsel for the Mississippi State Department of Health.

1. Beyond a Mississippi Licensed EMS Agency transmitting a patient report to a Mississippi Licensed Hospital to ensure continuity of care, what other requirements are required to properly transfer patient responsibility to a Mississippi Licensed Hospital?

If an individual “comes to the emergency department” then the Emergency Medical Treatment and Labor Act (hereinafter “EMTALA”) obligations are applicable. Under EMTALA, 42 CFR 489.24 (a)(1) (i) and (ii), a participating hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. If an emergency medical condition is determined to exist, the hospital must provide any necessary stabilizing treatment or an appropriate transfer. An individual “comes to the emergency department” when an ambulance is on hospital property for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department.

Rule 1.12.2 of the *Mississippi EMS Laws, Rules and Regulations* provides as follows:

A completed copy of a Patient Care Report containing Mississippi minimum EMS data set shall be left with or electronically submitted to hospital staff for all patients delivered to licensed Hospitals. If in the best interest of the public good, an immediate response to a patient is required of an ambulance delivering a patient to a licensed Hospital, a complete oral report on the patient being delivered will be given to the receiving facility and a completed copy of Patient Care Report for that patient shall be delivered to the hospital staff of the licensed Hospital within 24 hours.

The federal regulations and cases are clear that once an individual “comes to the emergency department” that individual is the hospital’s responsibility. State regulations provide specific reporting requirements for patients being delivered to a licensed hospital. It is our legal opinion that once an individual is on hospital grounds and the appropriate reporting required by state regulations has been made then it is the hospitals responsibility to provide appropriate medical screening and services and to determine whether to admit or transfer the patient. There are no additional requirements to properly transfer patient responsibility.

1. During the time a patient transported by a Mississippi Licensed EMS Agency is “parked” within the Emergency Department of a Mississippi Licensed Hospital should a patient deteriorate who is responsible for the care of the patient?

Under the EMTALA the responsibility of a hospital with a dedicated emergency department begins when an individual arrives on hospital property (ambulance arrival) and not when the hospital “accepts” the individual from the ambulance stretcher.

Under 42 CFR 489.24(b) an individual is considered to have “presented” to a hospital when he/she arrives at the hospital’s dedicated emergency department or on hospital property and a request is made by the individual or on his/her behalf of examination or treatment of an emergency medical condition. Additionally, under 42 CFR 489.24 (a) and (b), once an individual comes to the emergency department of the hospital, whether by EMS or otherwise, the hospital has an obligation to provide an appropriate medical screening examination and, if an emergency medical condition is determined to exist, provide any necessary stabilizing treatment or an appropriate transfer. Failure to meet these requirements constitutes a potential violation of EMTALA.

However, even if a hospital cannot immediately provide a medical screening examination, it must still triage the individual’s condition immediately upon arrival to ensure that emergent intervention is not required.

Rule 7.46.2 of the *Mississippi EMS Laws, Rules and Regulations* provides as follows:

Paramedics may routinely or periodically participate in patient care in the emergency department of a licensed hospital. Their presence may be in the form of: . . .

4. providing assistance to the emergency department staff after delivering a patient.

5. *NOTE: In accordance with letter B, Paramedics must, when functioning in the hospital, only do so under the direct supervision of a physician. This is necessary because the scope of practice of an Paramedics does not coincide with that of any other licensed personnel. Paramedics of a hospital owned, and based ambulance service may function in the Emergency Department under the direct supervision of a Mississippi licensed physician, physically located in Mississippi, via telemedicine. Paramedics may not function in other areas of hospitals which do not have on-site 24 hour physician availability.

State regulations state the conditions where a paramedic *may* participate in the emergency department of a hospital. However, state regulations do not require paramedics to participate in

patient care in the emergency department of a licensed hospital. Pursuant to these regulations any care rendered by paramedics in a hospital is required to be rendered under the direct supervision of a physician and should be consistent with the medical training, scope of practice and medical control of the EMS crew member. However, the legal liability for the deterioration of a patient who is "parked" will be dependent on the particular circumstances of each case.

The foregoing is the opinion of legal counsel assigned to the Mississippi State Department of Health and is not a formal Attorney General's Opinion issued pursuant to §7-5-25 of the Mississippi Code of 1972 Ann.